IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6390 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BG KUMBHANI

Versus

KESHOD NAGARPALIKA

Appearance:

1. Special Civil Application No. 6390 of 2002

MR ANAND L SHARMA for Petitioner No. 1

MR DEEPAK P SANCHELA for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1,3

MR PANDYA, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/08/2003

ORAL JUDGEMENT

Rule. Ms.Sejal Mandavia waives service of rule

on behalf of respondents No.1 and 3 and Mr.Pandya, learned AGP waives service of rule on behalf of respondent No.2. By consent of the parties, matter is taken up for final hearing today.

2) By filing this petition, the petitioner has challenged the order passed by the respondent No.1, Nagarpalika dated 31st July 2001, by which order of recovery is passed against the petitioner and five other employees. On the basis of the aforesaid order, even higher pay scale given to the petitioners is also taken away.

3) The said order is challenged by the petitioner on various grounds. However, the learned advocate for the petitioner has confined his arguments mainly on the point that the impugned order is passed without hearing the petitioner and the same is in violation of principles of natural justice. It is also submitted that the Nagarpalika gave him higher pay scale and under these circumstances, the petitioner is not at fault in any manner and, therefore, no recovery order should have been passed against him.

4) Ms.Sejal Mandavia, learned advocate appearing for the Keshod Municipality, submitted that the impugned order is passed in view of the direction given by the Collector. She has placed on record letter of the Collector, which is addressed to the President/Chief Officer of Nagar Palika dated 7-5-2001. It is submitted that in view of the aforesaid direction of the Collector, the Municipality has passed the impugned order.

5) Mr.Pandya, learned AGP has supported the decision of the Collector on the ground that in view of the audit objection, the Collector has decided to pass the impugned order, directing the Municipality to recover the amount, which is wrongly paid to the petitioner and other employees.

6) It is required to be noted that, by the impugned order, higher grade pay scale given to the petitioner is ordered to be taken away and there is also a consequential order of recovery of salary. Before passing such order, at least petitioner was required to be heard, as such order will have civil consequences. Apart from the said aspect, petitioner has also made representation to the Collector, which is annexed at Annexure-C dated 1-10-2001. It is submitted by the petitioner that said representation is still pending before the Collector. Considering the aforesaid aspect

of the matter, it is not necessary to examine merits of the rival contentions of the parties. However, the impugned order is required to be set aside on the short ground as the same is passed without hearing the present petitioner. It is required to be noted that since Municipality has acted as per the direction of the Collector, it would be just and proper to direct the Collector to hear the petitioner and after hearing the petitioner, Collector may pass appropriate order in accordance with law, and, ultimately, whatever may be the order of the Collector, the Municipality may act accordingly thereafter. Under the circumstances, the impugned order is set aside.

7) The Collector, Junagadh is directed to hear the petitioner and pass appropriate order in connection with withholding of the pay scale and recovery of the amount and the Municipality may act accordingly. The Collector may take decision within three months from today and till the Collector decides the representation of the petitioner, further recovery may not be effected from the salary of the petitioner. It is clarified that if any adverse order is passed, it will be open for the petitioner to challenge the same in accordance with law. Writ of this order to be sent to the Collector forthwith.

6) Accordingly, this petition is allowed. Rule made absolute with no order as to costs.

(P.B.Majmudar, J.)

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